

REMARKS

Claims 1 and 42-45 were pending in the application and were rejected. Claims 1, 44, and 45 were amended. Claim 42 was canceled. The claim amendments were made to incorporate the limitation of canceled claim 42 into claim 1, remove redundancy, and correct dependency. No further search is required. The specification has been corrected to show the changes made in order to incorporate section headings and is attached hereto. Applicant respectfully requests reconsideration.

SPECIFICATION

The Office Action further objected to the specification. A corrected specification was previously submitted. A second corrected specification is attached, including appropriate edit markings to add section headings and correct issues of trade dress.

INFORMATION DISCLOSURE STATEMENT

The Office Action required the foreign patent references listed in the previously-filed Information Disclosure Statement. Accordingly, Applicant is concurrently filing a corrected Information Disclosure Statement, including the six foreign references.

CLAIM REJECTIONS UNDER 35 USC §103

The Office Action rejected claims 1 and 43 under 35 USC 103(a), as being unpatentable over Buchmitch et al. (US Patent Publication No. 2002/0159601) in view of Morlang et al. (US Patent Publication No. 2003/0182576). Claim 1, as amended, is not unpatentable over Buchmitch and Morlang, either singly or in combination, because neither

reference teaches nor suggests the limitation of “wherein the user device tracks its own access code usage and compares a number of unused access codes to a predetermined threshold level after each use” as now clarified by the amendment to claim 1. The Examiner relies upon Buchmitch at paragraph [0053] for this teaching:

“[0053] The gateway keeps the counter (i) indexing the number of successful user authentications. If N=100, the counter goes from 100 down to 1. When the counter reaches 0, no more authentications are allowed for a given user ID without re-initializing the key card.”

Where is the teaching of a predetermined threshold applied to this counter? Further, where is the teaching of the local device tracking its own access code use? Clearly, Buchmitch uses the centralized gateway to track the number of user authentications. “A prior patent must be considered in its entirety, i.e., as a whole, including portions that would lead away from the invention in suit.” *W. L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1550, 220 USPQ 303, 311 (Fed. Cir. 1983), *cert. denied* 469 U.S. 851 (1984).

The Office Action rejected claims 42 and 44 under 35 USC 103(a) as being unpatentable over the combination of Bushmitch and Morlang as applied to claim 1 above, and further in view of Seth-Smith et al. (US P4890321), hereinafter referred to as Seth-Smith. Claim 42 has been deleted and its limitation has been incorporated into claim 1.

The Office Action at page 5 concedes that “Bushmitch and Morlang did not disclose wherein the user device tracks its own access code use.” The Office Action alleges that Seth-

Smith teaches this requirement in his teaching of a credit system at Col. 28, lines 27-47 (see below):

“FIG. 21 shows schematically the use of the data supplied to each individual decoder by way of the addressed packet. For example, the credit update data supplied at 300 is used at 302 to update the credit status of the user. Suppose the user is alerted by his decoder that his credit is running low. He then transmits a payment to the broadcaster, either by sending the broadcaster a check, or by telephoning the broadcaster and using a credit card to secure additional credit. Of course, other ways of communicating payment to the broadcaster are also possible. However, in either case, the broadcaster transmits the credit update data as at 30 to the individual decoder by way of an addressed packet. The decoder detects the addressed packet by noting that a user address number provided at 74 (FIG. 13) is its own address, and copying the addressed packet to the microprocessor. The microprocessor then recognizes the addressed packet as being one which contains credit update data and uses that data to update its own stored information concerning the user’s credit status, as at 302.”

Seth-Smith clearly does not teach a user device that tracks its own access code use. Seth-Smith is concerned with updating the credit status of a user at a centralized point. Note the sentence “However, in either case, the broadcaster transmits the credit update data as at 300 to the individual decoder by way of an addressed packet.” The broadcaster in Seth-Smith refers to a pay-per-view television station that needs to check a subscriber’s payment status before providing the requested pay-per-view show. This is a teaching away from a user device that tracks its own access code use.

The Office Action rejected claim 45 under 35 USC 103(a) as being unpatentable over the combination of Bushmitch and Morlang as applied to claim 1 above, and further in view

of Rune (US P 5850444). Applicant respectfully traverses this rejection. Rune's teaching of a "secret" or cryptographic key cannot be combined with Bushmitch and Morlang to render claim 45 obvious because claim 45, being dependent on claim 1, recites using a cryptographic key as part of a process wherein a user device tracks its own access code usage and requests new sets of access codes when the unused portion falls below a threshold level. Since none of the three references teach or suggest such a method, they do not render claim 45 obvious.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests allowance of the pending claims. The Director is hereby authorized to charge any fees which may be required, including any petition for extension of time fees under §1.17, or credit any overpayment, to Deposit Account Number 50-0510.

Respectfully submitted,

/Michael J. Buchenhorner/

Michael J. Buchenhorner
Reg. No. 33,162

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Michael Buchenhorner, P.A.
8540 S.W. 83 Street
Miami, Florida 33143
(305) 273-8007 (voice)
(305) 595-9579 (fax)